

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARGARET WHETSTONE,

Plaintiff

V.

**FRED'S STORES OF
TENNESSEE, INC.,**

Defendant

Case No.: 3:05-CV-1171

DEFENDANT'S RESPONSE TO MOTION TO REMAND

COMES NOW Defendant Fred's Stores of Tennessee, Inc., in the above referenced matter and responds to Plaintiff's Motion to Remand. As grounds for said request, Defendant Fred's Stores of Tennessee, Inc. states as follows:

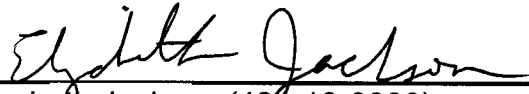
1. Plaintiff Margaret Whetstone filed this action against Defendant Fred's Stores of Tennessee, Inc. and Defendant Cintas Corporation in the Tallapoosa County Circuit Court in Alexander City on November 9, 2005. [See Complaint attached hereto as Exhibit 1]. Fred's Stores of Tennessee, Inc. was served on November 14, 2005 and Cintas Corporation was served on November 15, 2005.
2. Counsel for Fred's Stores of Tennessee, Inc. and Cintas Corporation worked together to prepare a Joint Petition for Removal to the United States District Court for the Middle District of Alabama. The parties sought removal to federal court pursuant to 28 U.S.C. §§1441 and 1446 and asserted federal diversity of citizenship

jurisdiction pursuant to 28 U.S.C. § 1332. [See Revised Joint Petition for Removal attached hereto as Exhibit 2].

3. Removal of this case is proper because complete diversity exists between the parties in this action. Plaintiff, Margaret Whetstone, is a citizen and resident of Coosa County, Alabama. Defendant Fred's Stores of Tennessee, Inc., is a foreign corporation organized and existing under the laws of the State of Tennessee, and its principal place of business is in Memphis, Tennessee. Defendant Cintas Corporation is a foreign corporation incorporated in the State of Washington with its principal place of business in Cincinnati, Ohio.
4. The Joint Petition for Removal and Notice of Removal were revised on December 6, 2005 to include signatures of counsel for both defendants. [See Exhibit 2]. On December 9, 2005, Counsel for Fred's Stores of Tennessee, Inc. filed its Petition of Removal in the United States District Court in the Middle District of Alabama. The Petition of Removal was timely filed because it was submitted within thirty (30) days after the day Defendants received a copy of, or otherwise received notice of, the summons and complaint in this action.
5. On December 9, 2005, due to a clerical error, the Petition of Removal was inadvertently filed without the signature page of both parties. Instead, a draft of the Petition of Removal was filed with the wrong signature page. [See original Petition of Removal attached hereto as Exhibit 3].

6. On December 28, 2005, Defendants received Plaintiff's Motion to Remand for Procedural Defect claiming that Defendant Fred's Stores of Tennessee, Inc. had not followed proper procedure for removal. Plaintiff's Motion asserted that the Petition of Removal was defective because it had not been signed by both defendants. [See Plaintiff's Motion to Remand for Procedural Defect attached hereto as Exhibit 4].
7. Section 1446 of the Federal Rules of Civil Procedure does not require that all defendants sign the Petition of Removal. Defendants have not violated any procedural rule.
8. In the Petition of Removal originally filed, the introduction states that Defendants Fred's Stores of Tennessee, Inc. and Cintas Corporation join together in the Petition. [See Exhibit 3]. Thus, the intent of both parties to file the Petition jointly is reflected in the introduction of the original Petition that was filed.
9. Defendant Fred's Stores of Tennessee, Inc. has timely filed a Substituted Petition for Removal including the signature of both defendants. [See Substituted Petition for Removal attached hereto as Exhibit 5].

WHEREFORE, premises considered, Defendant Fred's Stores of Tennessee, Inc. hereby respectfully requests that this Honorable court maintain jurisdiction of this case



Elizabeth Jackson (424-19-0898)
Attorney for Defendant Fred's Stores of
Tennessee, Inc.

OF COUNSEL:

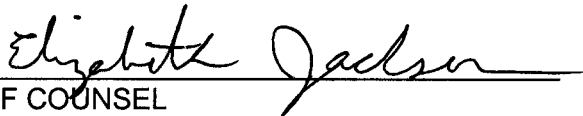
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing pleading upon all counsel of record in this cause by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the _____ day of _____, 2005:

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